

PHILLIP M. GARDINER ET AL.

IBLA 79-28

Decided July 24, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting for purposes of recordation certificates of location for the Silver Dyke No. 1 and the Molybdenite Nos. 9 to 12 lode mining claims.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation.

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

APPEARANCES: Phillip M. Gardiner, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Phillip M. Gardiner, Glenn W. Sorensen, and J. M. Gardiner have appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 11, 1978, in effect rejecting certificate of location for five mining claims, identified as the Silver Dyke No. 1 and the Molybdenite Nos. 9 through 12. The rejection consisted of a form letter, which stated that the reason for the

rejection was that the certificates were not filed within 90 days after the date of location of the claims as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976).

In the appeal, appellant Philip M. Gardiner avers that he had never been informed that he was required to file notices of location as of a specific date. Moreover, he contends that he felt that the 90 days should run from the date of the certification of the location, not from the date of the location.

Before examining appellant's contentions, we wish to comment on the actions of the State Office herein. The location certificates which appellant originally filed lacked the following information: a description of the claim, the name of the claim, a map of the claim, and most importantly, the date of location of the claim. It is clear that under no interpretation of the statute or applicable regulations could it be argued that appellant had complied with the recordation requirements. See Roy M. Bryam, 39 IBLA 32 (1979); James F. Giancarlo, 37 IBLA 88 (1978).

The State Office, however, did not reject the location certificates for any of these reasons. On the contrary, it premised its rejection on the one fact of which it could have no knowledge: whether or not the filing had been made within 90 days of the date of location of the claims. Inasmuch as appellant had not provided the dates of location, the State Office had no way of knowing whether the filings were or were not timely. In point of fact, had appellant's filing complied with the statutory requirements, the Molybdenite No. 9 would have been timely recorded.

We mention this fact since it is imperative, in view of the consequences of untimely or incomplete filing, that the State Office inform mining claimants of the manner in which their filing is deficient, particularly as there may be a possibility of correcting the deficiency within the 90-day statutory period. We would hope in the future that decisions rejecting notices and certificates of recordation will more accurately address the deficiencies which may exist in those documents.

[1] As our above discussion makes clear, however, the original filings were clearly deficient and did not comport with the statute and regulations. While all of the above omissions were supplied by appellant's submission of October 10, 1978, this filing was too late for all five of the claims, which had been located between June 8 and June 12. Under the express terms of the statute, these claims must be deemed conclusively to have been abandoned. See section 314(c) of the Act of October 21, 1976, 90 Stat. 2769, 43 U.S.C. § 1744(c) (1976).

Appellant's contention that the date of recording of his location notices in Gunnison County is the date which triggers the running of

the 90-day period is contradicted by the clear terms of the statute and regulations, which require the filing of a notice of recordation with BLM "within ninety days after the date of location of such claim." 43 U.S.C. § 1744(b) (1976). See Ronald Coulam, 35 IBLA 35 (1978); Southwestern Exploration Associates, 33 IBLA 240 (1977).

The fact that appellant may have been unaware of the requirements of recordation, while unfortunate, does not excuse him from compliance with the law. Those who deal with the Government are presumed to have knowledge of the law, and the regulations duly adopted pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). This Board has no authority to excuse lack of compliance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge

